

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

MICHAEL A. KELLY,

Plaintiff,

Case No. 16-cv-12624

v

Honorable Thomas L. Ludington
Magistrate Judge Patricia T. Morris

ELIZABETH MARY RICH,

Defendant.

/

**ORDER GRANTING MOTION TO DISMISS, REJECTING REPORT AND
RECOMMENDATION AS MOOT, AND DISMISSING CASE WITHOUT PREJUDICE**

On August 14, 2016 Plaintiff Michael A. Kelly initiated this action against Defendant Elizabeth Mary Rich, alleging that Defendant criminally conspired to deprive him of his constitutional rights by filing a false police report against him in violation of 18 U.S.C. § 241. *See* Compl., ECF No. 1. Kelly's application to proceed without prepayments of fees or costs was granted, and the matter was referred to Magistrate Judge Patricia T. Morris for pretrial purposes on July 25, 2016. *See* ECF Nos. 5, 6. On August 3, 2016 the magistrate issued a report and recommendation, recommending *sua sponte* dismissing Kelly's case for lack of subject matter jurisdiction pursuant to the IFP screening statute, 28 U.S.C. § 1915(e)(2)(B). *See* Rep. and Rec., ECF No. 25. The report provided Kelly with fourteen days to file any objections. *Id.*

On September 9, 2016 Plaintiff Kelly filed a motion to dismiss his case without prejudice. *See* ECF No. 10. Federal Rule of Civil Procedure 41 provides that a plaintiff may voluntarily dismiss his case without a court order by filing "a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment[.]" Fed. R. Civ. P. 41(a)(1)(A)(i). An action may also be dismissed at the plaintiff's request "by court order, on

terms that the court considers proper.” In the present action, Defendant has not yet appeared or filed an answer. Plaintiff Kelly’s motion to dismiss will therefore be granted, and the report and recommendation rejected as moot.

Accordingly, it is **ORDERED** that Plaintiff Michael Kelly’s motion to dismiss, ECF No. 10, is **GRANTED**.

It is further **ORDERED** that the magistrate’s report and recommendation, ECF No. 7, is **REJECTED as moot**.

It is further **ORDERED** that this matter is **DISMISSED without prejudice**. This is a final order and closes the case.

s/Thomas L. Ludington
THOMAS L. LUDINGTON
United States District Judge

Dated: September 21, 2016

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on September 21, 2016.

s/Michael A. Sian
MICHAEL A. SIAN